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JACQUES MORET, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LULULEMON ATHLETICA
CANADA INC. AND LULULEMON
USA, INC.,

Plaintiffs,

vs.

COSTCO WHOLESALE
CORPORATION

Defendant,

JACQUES MORET, INC.

Defendant-Intervenor.

Case No. 2:25-CV-05864-FLA(AJR_x)

JOINT RULE 26(f) REPORT

Scheduling Conference:
October 17, 2025 at 1:00 p.m.

Pursuant to Fed. R. Civ. P. 26(f), Local Rule 26-1, and the Court's August 29, 2025, Order Setting Scheduling Conference (Dkt. 34), Plaintiffs lululemon athletica canada inc. and lululemon usa, inc. (collectively, "lululemon"), Defendant Costco Wholesale Corporation ("Costco") and Defendant-Intervenor Jacques Moret, Inc. ("Moret") (collectively, "Defendants") have conferred as required by Rule 26(f), and jointly submit the following report. lululemon, Costco and Moret are collectively referred to as the "Parties."

a. **Statement of the Case:**

Plaintiffs' Statement: This action involves claims by lululemon against Costco and Moret for design patent infringement, trademark infringement, trade dress infringement, false designation of origin, passing off and federal unfair competition, California statutory unfair competition, and California common law unfair competition arising out of Costco and Moret's design, manufacture and/or sale of certain apparel that lululemon contends infringes of lululemon's well-known trade dress and design patents embodied in lululemon's popular SCUBA® hoodies and sweatshirts, DEFINE® jackets, and ABC pants. The action further involves allegations of trademark infringement of lululemon's registered SCUBA® mark and unregistered TIDEWATER TEAL mark.

On June 27, 2025, lululemon filed the Complaint asserting the following causes of action:

- (1) Infringement of the Registered DEFINE Trade Dress and corresponding U.S. Reg. Nos. 7,526,264 and 7,526,265 covering same under 15 U.S.C. § 1114;
- (2) Infringement of the SCUBA Mark and corresponding U.S. Reg. No. 4,333,759 covering same under 15 U.S.C. § 1114;
- (3) Infringement of the DEFINE Trade Dress under 15 U.S.C. § 1125(a);
- (4) Infringement of the lululemon DEFINE Trade Dress under 15 U.S.C. § 1125(a);
- (5) Infringement of the SCUBA Trade Dress under 15 U.S.C. § 1125(a);

1 (6) Infringement of the ABC Trade Dress under 15 U.S.C. § 1125(a);

2 (7) Infringement of the TIDEWATER TEAL™ Mark under 15 U.S.C. §
3 1125(a);

4 (8) False designation, passing off and federal unfair competition arising out
5 of Costco and Moret's unauthorized use of the DEFINE Trade Dress, the SCUBA
6 Trade Dress, the ABC Trade Dress, the SCUBA Mark, and the TIDEWATER
7 TEAL™ Mark;

8 (9) California common law trade dress and trademark infringement arising
9 out of Costco and Moret's unauthorized use of the lululemon DEFINE Trade Dress,
10 the SCUBA Trade Dress, the ABC Trade Dress;

11 (10) California statutory unfair competition arising out of the Costco and
12 Moret's misappropriation and unauthorized use of the DEFINE Trade Dress, the
13 SCUBA Trade Dress, the ABC Trade Dress, the SCUBA Mark, and the
14 TIDEWATER TEAL™ Mark;

15 (11) California common law unfair competition arising out of Costco and
16 Moret's misappropriation and unauthorized use of the lululemon DEFINE Trade
17 Dress, the SCUBA Trade Dress, the ABC Trade Dress;

18 (12) Infringement of U.S. Design Patent Nos. D989,442 and D1,035,219 (the
19 "'442 Patent" and "'219 Patent", respectively).

20 On August 21, 2025, Costco filed its Answer denying lululemon's allegations
21 and asserting nine affirmative defenses.

22 On August 26, 2025, Moret filed a Motion to Intervene ("Motion"), which the
23 Court granted on September 2, 2025. On September 23, 2025, Moret filed its Answer,
24 Affirmative Defenses and Counterclaims denying lululemon's allegations and
25 asserting sixteen affirmative defenses. Moret also counterclaimed seeking a
26 declaration of non-infringement of the '442 and '219 Patents, and of lululemon's
27 asserted trade dress and trademark under the Lanham Act and state law.

28 lululemon's response to Moret's counterclaims are due to be filed by October

1 7, 2025.

2 Costco's Statement: Costco is a membership-based warehouse club, operating
3 brick-and-mortar warehouses and e-commerce sites in the U.S. and worldwide.
4 Costco sells a limited selection of both branded and private-label products to its
5 members, across a wide range of categories including apparel.

6 Plaintiffs allege Costco infringes certain alleged registered and unregistered
7 trade dresses, registered and unregistered trademarks, and design patents and
8 engaged in unfair competition by selling and/or offering for sale six garments (the
9 "Accused Products"). In addition to claims for intellectual property infringement,
10 Plaintiffs also assert state and federal unfair competition claims in connection with
11 the alleged infringement.

12 Costco denies that it infringes any of Plaintiffs' intellectual property or
13 engaged in unfair competition. For example, as to the asserted alleged trademarks
14 and trade dresses, there is no likelihood of confusion concerning the source of the
15 Accused Products. As to the asserted design patents, from the perspective of an
16 ordinary observer, the products accused of infringing these patents do not contain
17 designs that are substantially similar to the accused designs.

18 In addition, Costco disputes the validity of the various trade dress, trademarks,
19 and design patents asserted. Specifically, Costco disputes that the asserted registered
20 and common law trade dresses (the unregistered and registered DEFINE trade dress,
21 the unregistered SCUBA trade dress, and the unregistered ABC trade dress) are valid
22 and/or enforceable, because they are not inherently distinctive and have not acquired
23 secondary meaning. Costco similarly disputes that the asserted common law
24 TIDEWATER TEAL mark has acquired secondary meaning and acts as a source
25 identifier. Costco further asserts that the purported SCUBA trademark is generic, was
26 generic when registered, and is therefore invalid and unenforceable. Finally, Costco
27 intends to show that the asserted patents are invalid for failure to satisfy the statutory
28 requirements of novelty and/or non-obviousness. Costco has asserted numerous

1 additional affirmative defenses and disputes that any relief, whether monetary or
2 injunctive, is warranted.

3 Moret's Statement: Moret is a leading designer, importer and supplier of
4 apparel and accessories under a number of brands, including the Danskin and Jockey
5 brands. Moret sells its products to retailers, such as Costco, who then sell Moret's
6 products to consumers.

7 On June 27, 2025, lululemon filed the Complaint asserting ten (10) causes of
8 action directed to Moret products, with the ten causes of action in relevant part
9 asserting:

- 10 • Alleged infringement of the purported registered DEFINE Trade Dress (U.S.
11 Reg. Nos. 7,526,264 and 7,526,265) under 15 U.S.C. § 1114;
- 12 • Alleged infringement under 15 U.S.C. § 1125(a) of each of the purported
13 common law DEFINE Trade Dress, purported common law SCUBA Trade
14 Dress, and purported common law TIDEWATER TEAL Mark;
- 15 • Alleged false designation, passing off and federal unfair competition arising
16 out of Moret's alleged use of the purported common law DEFINE Trade Dress,
17 the purported common law SCUBA Trade Dress, and the purported common
18 law TIDEWATER TEAL Mark;
- 19 • Alleged California common law trade dress and trademark infringement
20 arising out of Moret's alleged use of the purported common law DEFINE
21 Trade Dress and the purported common law SCUBA Trade Dress;
- 22 • Alleged California statutory unfair competition arising out of Moret's alleged
23 use of the DEFINE Trade Dress, the SCUBA Trade Dress, and the
24 TIDEWATER TEAL Mark;
- 25 • Alleged California common law unfair competition arising out of Moret's
26 alleged use of the purported common law DEFINE Trade Dress and the
27 purported common law SCUBA Trade Dress; and
- 28 • Alleged infringement of U.S. Design Patent Nos. D989,442 and D1,035,219

(the “’442 Patent” and “’219 Patent”, respectively).

On August 26, 2025, Moret filed a Motion to Intervene (“Motion”), which the Court granted on September 2, 2025. On September 23, 2025, Moret filed its Answer, Affirmative Defenses and Counterclaims, wherein Moret denies lululemon’s allegations, denies that lululemon is entitled to any relief, and wherein Moret asserts counterclaims that seek:

- a Declaratory Judgment of Non-Infringement of the ’442 Patent and ’219 Patent with respect to Moret’s accused products;
- a Declaratory Judgment of Non-Infringement of the trade dress and trademark asserted by lululemon under the Lanham Act with respect to Moret’s accused products; and
- a Declaratory Judgment of Non-Infringement of the trade dress and trademark asserted by lululemon under California state law with respect to Moret’s accused products.

Particularly, Moret disputes the validity of the trade dress, trademark, and design patents asserted by lululemon. Moret intends to show that the various trade dress and trademark asserted by lululemon are not inherently distinctive and have not acquired secondary meaning, and are thus invalid and/or unenforceable. With respect to the design patents asserted by lululemon, Moret will show that the asserted design patents fail to meet the statutory written description, novelty, and non-obviousness requirements, and are thus invalid and unenforceable.

Moreover, Moret denies infringing any of lululemon’s intellectual property and denies lululemon’s allegations of unfair competition. lululemon will be unable to demonstrate that there is any likelihood of confusion as to the source of any of Moret’s accused products. Further, Moret’s accused products are plainly dissimilar from the design patents asserted by lululemon, and lululemon will be unable to show otherwise.

Moret asserts that lululemon is not entitled to relief on any its claims.

1 b. **Subject Matter Jurisdiction:**

2 lululemon alleged this Court has subject matter jurisdiction over the federal
3 claims asserted in this action under one or more of 28 U.S.C. § 1331 and 1338(a) and
4 supplemental jurisdiction over lululemon's state law claims under 28 U.S.C.
5 § 1367(a). Moret alleged this Court has subject matter jurisdiction over the federal
6 counterclaims asserted in this action under 15 U.S.C. § 1121, 28 U.S.C. §§ 1331,
7 1338, 2201 and 2202 and supplemental jurisdiction over Moret's state law
8 counterclaims under 28 U.S.C. § 1367(a). The Parties do not contest this Court's
9 subject matter jurisdiction.

10 c. **Legal Issues:**

11 Plaintiffs' Statement: At this time, lululemon identifies the following legal
12 issues to be decided in this action:

13 (1) Whether Costco and Moret are liable for infringing the trade dress
14 asserted by lululemon;

15 (2) Whether Costco and Moret are liable for infringing the trademarks
16 asserted by lululemon;

17 (3) Whether Costco and Moret are liable for infringing the design patents
18 asserted by lululemon;

19 (4) Whether Costco and Moret unfairly competed with lululemon in
20 violation of Federal and California law;

21 (5) If Costco and/or Moret are found liable for any of lululemon's claims,
22 the extent of monetary relief, including damages, lost profits and/or disgorgement, to
23 which lululemon is entitled;

24 (6) If Costco and/or Moret are found liable for any of lululemon's claims,
25 whether lululemon is entitled to enhanced and/or punitive damages;

26 (7) If Costco and/or Moret are found liable for any of lululemon's claims,
27 whether lululemon is entitled to their costs and/or attorneys' fees;

28 (8) If Costco and/or Moret are found liable for any of lululemon's claims,

1 whether lululemon is entitled to injunctive relief;

2 (9) If lululemon's claims are barred, in whole or in part, by the affirmative
3 defenses raised by Costco and Moret; and

4 (10) If Moret's counterclaims are barred, in whole or in part, by the
5 affirmative defenses raised by lululemon.

6 Costco's Statement: The key legal issues in this case will include:

7 (1) whether Plaintiffs' asserted trade dresses, trademarks, and/or design
8 patents are valid and enforceable;

9 (2) whether Plaintiffs' asserted unregistered trade dresses and trademarks
10 are protectible, including whether they have acquired a secondary meaning or are
11 inherently distinctive;

12 (3) whether Costco infringes any of Plaintiffs' asserted trade dress,
13 trademarks, and/or design patents, and, if so, whether any such infringement was
14 willful;

15 (4) whether Costco engaged in unfair competition in violation of Federal
16 and/or California law;

17 (5) whether Plaintiffs claims are barred by the doctrine of fair use, any
18 applicable statutes of limitations, and/or any equitable principles;

19 (6) to what relief, if any, Plaintiffs are entitled, including whether Plaintiffs
20 are entitled to any damages or injunctive relief; and

21 (7) whether this is an exceptional case.

22 Moret's Statement: Moret identifies the legal issues to be decided in this action
23 to include, but not be limited to:

24 (1) Whether the registered trade dress asserted by lululemon is valid and
25 enforceable;

26 (2) Whether the design patents asserted by lululemon are valid and
27 enforceable, including whether the design patents satisfy the statutory written
28 description, novelty, and non-obviousness requirements for patents;

1 (3) Whether the common law trade dress and trademark asserted by
2 lululemon are protectible as having acquired second meaning and/or as inherently
3 distinctive;

4 (4) Whether Moret is entitled to declarations of non-infringement of any of
5 the trade dress, trademark, and/or design patents asserted by lululemon;

6 (5) Whether Moret is liable for infringement of any one or more of the trade
7 dress, trademark, and/or design patents asserted by lululemon;

8 (6) If Moret is liable for any infringement, whether any such infringement
9 was willful;

10 (7) Whether Moret is liable for violating Federal and California unfair
11 competition law;

12 (8) Whether lululemon's claims are barred, in whole or in part, by the
13 affirmative defenses raised by Moret; and

14 (9) Whether relief should be granted to lululemon on any of its claims;

15 (10) If Moret is not found liable for any of lululemon's claims, whether
16 Moret is entitled to its costs and/or attorneys' fees; and

17 (11) Whether this case is exceptional.

18 d. **Parties and Evidence:**

19 **Plaintiffs' Statement:** The Parties in this litigation are Plaintiffs lululemon usa
20 inc., and lululemon athletica canada inc., who share the same ultimate parent
21 company lululemon athletica inc.; Defendant Costco Corporation; and Defendant-
22 Intervenor Jacques Moret, Inc.

23 At this time, the parties anticipated percipient witnesses will include: (1)
24 corporate representatives of lululemon; (2) corporate representatives of Costco; and
25 (3) corporate representatives of Moret.

26 While not yet identified or fully known, lululemon anticipates that the key
27 documents in this case will include documents relating to: the nature and history of
28 lululemon's business and lululemon's products at issue; the nature and history of

1 Costco's business, business model, and private label strategy; lululemon's adoption
2 and first use of the asserted trademarks and trade dress; U.S. Trademark Reg. Nos.
3 4,333,759, 7,526,264 and 7,526,265, and related prosecution file histories; the
4 policing, and enforcement of the asserted trademarks and trade dress; lululemon's
5 use and marketing of the asserted trademarks and trade dress, and the success and
6 recognition of same; the acquired distinctiveness of the asserted trade dress and
7 asserted TIDEWATER TEAL mark; the channels of trade for lululemon's products
8 at issue; lululemon's marketing, advertising, and promotion of lululemon's products
9 at issue; actual and target customers for lululemon's products at issue; any actual or
10 likely confusion between Costco and/or Moret's accused products, and lululemon's
11 products at issue; lululemon's trademark usage guidelines; the '442 and '219 patents,
12 and related prosecution file histories; publications, patents and other prior art relating
13 to the '442 and '219 patents; lululemon's pricing, sales, revenues, profits, discounts,
14 and costs associated with lululemon's products at issue; and lululemon's claim for
15 damages.

16 Costco's Statement: Defendant is Costco Wholesale Corporation. Costco has
17 the following subsidiaries: Costco Wholesale Membership, Inc.; Costco Wholesale
18 Canada Ltd.; NW Re Limited; Costco Insurance Agency, Inc.; Price Costco
19 International, Inc.; Costco Wholesale Korea, Ltd.; Costco Wholesale Japan, Ltd.;
20 Costco de Mexico, S.A. de C.V.; Costco Wholesale UK Limited; Costco Wholesale
21 Taiwan, Inc.; Costco Wholesale Australia, Pty. Ltd.

22 While not yet identified or fully known, Costco provides the following
23 preliminary list of percipient witnesses:

- 24 (1) individuals with knowledge of the Accused Products;
25 (2) individuals with knowledge as to the design, development, marketing
26 and/or enforcement of the asserted intellectual property;
27 (3) individuals with knowledge of Plaintiffs' awareness of the Accused
28 Products;

1 (4) individuals with knowledge of any damages or other relief Plaintiff
2 seeks as the result of any alleged conduct by Costco; and

3 (5) third parties, including individuals with knowledge relating to the
4 asserted intellectual property and/or expert witnesses who can testify on issues
5 relating to infringement, validity, and/or damages as to the asserted intellectual
6 property.

7 At this preliminary stage, Costco understands the key documents or other
8 evidence concerning the main issues to include:

9 (1) design and development documents for the asserted intellectual property
10 and the lululemon products bearing or embodying the same;

11 (2) documents relating to the prosecution of the trade dress, trademark, or
12 design patent applications concerning the asserted intellectual property;

13 (3) documents related to intellectual property ownership;

14 (4) prior art pertinent to the asserted patents;

15 (5) marketing, survey, focus group, and other data relating to the market for
16 the Accused Products and for Plaintiffs' products bearing or embodying the asserted
17 intellectual property;

18 (6) documents reflecting Plaintiffs' sales, costs, and profits for Plaintiffs'
19 products bearing or embodying the asserted intellectual property; and

20 (7) documents relating to the design, development, manufacture, marketing,
21 and sale of the Accused Products.

22 Moret's Statement: Defendant-Intervenor is Jacques Moret, Inc., whose parent
23 is the privately-held company The Moret Group. Moret does not presently anticipate
24 seeking to add additional parties, but reserves the right to do so as its investigation
25 and discovery continue.

26 At this time, Moret's anticipated percipient witnesses will include: (1)
27 individuals with knowledge of Moret's accused products; (2) individuals with
28 knowledge of lululemon's products allegedly embodying the intellectual property

1 asserted by lululemon; (3) individuals with knowledge of the design, development,
2 manufacture, marketing, and/or enforcement of the intellectual property asserted by
3 lululemon, including, but not limited to, corporate representatives of lululemon; (4)
4 individuals with knowledge of the design, development, manufacture, marketing
5 and/or sale of Moret's accused products, including, but not limited to, corporate
6 representatives of Moret and/or Costco; (5) third parties, including, but not limited
7 to, expert witnesses who can testify on issues relating to intellectual property.

8 While not yet identified or fully known, Moret anticipates that the key
9 documents in this case will include documents relating to: the nature and history of
10 lululemon's business and lululemon's products at issue, including, but not limited to,
11 the manufacture, structure, use, design, and development of such products; the nature
12 and history of Costco's business, business model, and private label strategy; the
13 nature and history of Moret's business and Moret's accused products, including, but
14 not limited to, the manufacture, structure, use, design, and development of such
15 products; lululemon's purported adoption and first use of the asserted trademarks and
16 trade dress; U.S. Trademark Reg. Nos. 7,526,264 and 7,526,265, and other related
17 trademarks and trademark registration applications and assignments, and the related
18 prosecution file histories; lululemon's policing, and enforcement of the asserted
19 trademarks and trade dress against third parties; lululemon's use and marketing of
20 the asserted trademarks and trade dress, and the purported success and recognition of
21 same; the purported acquired distinctiveness of the asserted trade dress and asserted
22 TIDEWATER TEAL mark; the channels of trade for lululemon's products at issue;
23 the channels of trade for Moret's accused products; lululemon's marketing,
24 advertising, and promotion of lululemon's products at issue; Moret's marketing,
25 advertising, and promotion of Moret's accused products; actual and target customers
26 for lululemon's products at issue; actual and target customers for Moret's accused
27 products; any purported actual or likely confusion between Moret's accused products
28 and lululemon's products at issue; lululemon's trademark usage guidelines; the '442

1 and '219 patents, and related patents and patent applications and assignments, and
2 related prosecution file histories; publications, patents and other prior art relating to
3 the '442 and '219 patents; the invention, conception, and reduction to practice of the
4 designs claimed in the '442 and '219 patents; lululemon's policing and enforcement
5 of the '442 and '219 patents against third parties; licensing, sub-licensing, and/or
6 offers to license the asserted trademarks, trade dress, and patents; lululemon's
7 pricing, sales, revenues, profits, discounts, and costs associated with lululemon's
8 products at issue; and Moret's pricing, sales, revenues, profits, discounts, and costs
9 associated with Moret's accused products.

10 e. **Damages:**

11 lululemon's Statement: lululemon is currently without sufficient information
12 to provide a computation of damages claimed but will submit a calculation of
13 damages when appropriate. lululemon's computation of damages will be based, at
14 least in part, on discovery obtained from Costco and Moret. lululemon seeks an order
15 permanently enjoining Costco and Moret from directly or indirectly infringing the
16 asserted design patents, trademarks and trade dress and engaging in acts of unfair
17 competition as set forth in the Complaint. lululemon also seeks an award of damages
18 adequate to compensate lululemon for Costco and Moret's acts of design patent
19 infringement, trademark infringement, trade dress infringement and unfair
20 competition under applicable federal and state law, including as permitted under 15
21 U.S.C. § 1117(a) and 35 U.S.C. §§ 284 and 289, together with pre-judgment interest
22 and post-judgment interest. Finally, lululemon is further entitled to enhanced
23 damages due to Costco and Moret's willful conduct and punitive damages for their
24 violations of California law, and the costs of suit, including reasonable attorneys'
25 fees.

26 Costco's Statement: Costco denies that Plaintiffs are entitled to any damages
27 because the Accused Products do not infringe any valid or enforceable intellectual
28 property, including because there is no likelihood of confusion as to the source of the

1 Accused Products; because the Accused Products are not substantially similar to
2 Plaintiffs' asserted design patents; and because Costco has not engaged in any unfair
3 competition.

4 Moret's Statement: Moret denies that the intellectual property asserted by
5 lululemon is valid or enforceable, that Moret's accused products infringe any of the
6 intellectual property asserted by lululemon, or that Moret has engaged in unfair
7 competition. Moret asserts there is no likelihood of confusion as to the source of
8 Moret's accused products, and Moret's accused products are plainly dissimilar to the
9 design patents asserted by lululemon. Moret denies that lululemon is entitled to relief
10 on any of its claims.

11 f. **Insurance**:

12 lululemon's Statement: At present, lululemon is unaware of any insurance
13 agreement under which an insurance business or other entity may be liable to satisfy
14 all or part of a possible judgment in this action, or to indemnify or reimburse for
15 payments made to satisfy any such judgment.

16 Costco's Statement: Costco does not have any insurance coverage related to
17 this matter.

18 Moret's Statement: Moret is not presently aware of any relevant insurance
19 agreement under which an insurance business or other entity may be liable to satisfy
20 all or part of a possible judgment in this action, or to indemnify or reimburse for
21 payments made to satisfy any such judgment.

22 g. **Motions**:

23 Plaintiffs' Statement: lululemon anticipates filing a motion to strike certain of
24 Moret's affirmative defenses. Plaintiffs do not presently anticipate filing any
25 amended pleadings or motions to add parties or claims, transfer venue or challenge
26 the Court's jurisdiction. Plaintiffs also anticipate they may also file pretrial motions
27 relating to expert testimony and motions *in limine*.

28 Costco's Statement: Costco does not presently anticipate filing any specific

1 non-dispositive motions unrelated to discovery disputes. Costco also anticipates
2 filing pretrial motions relating to expert testimony and motions *in limine*.

3 Moret's Statement: Moret does not presently anticipate filing any motions to
4 add parties, transfer venue or challenge the Court's jurisdiction. Moret reserves the
5 right to seek to amend its pleadings should new information revealed during the
6 course of its continuing investigation or discovery warrant such amendments. Moret
7 also anticipates filing discovery motions as necessary, pretrial motions relating to
8 expert testimony, and motions *in limine*.

9 h. **Dispositive Motions**:

10 Plaintiffs' Statement: No dispositive motions are currently pending before the
11 court. However, Plaintiffs anticipate filing dispositive motions. Likely subjects for
12 dispositive motions include summary judgment and/or summary adjudication
13 motions relating to lululemon's claims and Moret's counterclaims. The Parties'
14 currently proposed cut-off date for dispositive motions is outlined in the completed
15 Schedule Worksheet attached hereto as Exhibit A.

16 Costco's Statement: Though dependent on discovery, based on its current
17 understanding, Costco anticipates filing a motion for summary judgment or partial
18 summary judgement. The Parties' currently proposed cut-off date for dispositive
19 motions is outlined in the completed Schedule Worksheet attached hereto as Exhibit
20 A.

21 Moret's Statement: No dispositive motions are currently pending before the
22 court. However, Moret anticipates filing dispositive motions. In particular, in
23 addition to summary judgment and/or summary adjudication motions relating to
24 lululemon's claims, Moret anticipates filing a motion for judgment on the pleadings
25 with respect to non-infringement. The Parties' currently proposed cut-off date for
26 dispositive motions is outlined below and in the completed Schedule Worksheet
27 attached hereto as Exhibit A.

1 i. **Manual for Complex Litigation:**

2 The Parties do not consider this to be a case requiring application of the
3 Manual for Complex Litigation.

4 j. **Design Patent Claim Construction**

5 Moret's Statement: Moret respectfully submits that it is incumbent on the
6 Court to conduct claim construction proceedings with respect to the two design
7 patents asserted by lululemon. In this case, early claim construction proceedings
8 would likely result in (1) significantly limiting the scope of the litigation relating to
9 the design patent infringement claims and (2) potentially disposing of the design
10 patent claims in their entirety due to invalidity of the claimed designs for
11 indefiniteness.

12 “[T]rial courts have a duty to conduct claim construction in design patent
13 cases, as in utility patent cases.” *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665,
14 679 (Fed. Cir. 2008); *cf. Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970-
15 71 (Fed. Cir. 1995) (“the interpretation and construction of patent claims, which
16 define the scope of the patentee’s rights under the patent, is a matter of law
17 exclusively for the court”), *aff’d*, 517 U.S. 370 (1996).

18 Claim construction is particularly important for design patent cases because
19 “[d]esign patents have almost no scope.” *In re Mann*, 861 F.2d 1581, 1581 (Fed. Cir.
20 1988). The Court should follow *Egyptian Goddess* and subsequent Federal Circuit
21 cases to narrowly construe the claimed designs. In *Egyptian Goddess*, the Federal
22 Circuit held that district courts must (i) “recognize[] that design patents typically are
23 claimed as shown in the drawings”; (ii) “distinguish[] between those features of the
24 claimed design that are ornamental and those that are purely functional”; (iii) “point
25 out . . . various features of the claimed design as they relate to . . . the prior art.” 543
26 F.3d at 679-80 (internal quotations and citations omitted); *Lanard Toys, Ltd. v.*
27 *Dolgencorp LLC*, 958 F.3d 1337, 1342 (Fed. Cir. 2020) (confirming application of
28 *Egyptian Goddess* standard).

1 Significantly, indefiniteness is a matter properly taken up at claim
2 construction. *Ave. Innovations, Inc. v. E. Mishan & Sons, Inc.*, 310 F. Supp. 3d 457,
3 462 (S.D.N.Y. 2018) (“Indefiniteness is a matter of claim construction, and the same
4 principles that govern claim construction are applicable to determining whether
5 allegedly indefinite claim language is subject to construction.”) (citation and
6 quotation omitted); *aff’d*, 829 F. App’x 529 (Fed. Cir. 2020). “[A] patent is invalid
7 for indefiniteness if its claims, read in light of the specification delineating the patent,
8 and the prosecution history, fail to inform, with reasonable certainty, those skilled in
9 the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*,
10 572 U.S. 898, 901 (2014). The Federal Circuit has held that a “design patent is
11 indefinite under [35 U.S.C.] § 112 if one skilled in the art, viewing the design as
12 would an ordinary observer, would not understand the scope of the design with
13 reasonable certainty based on the claim and visual disclosure.” *In re Maatita*, 900
14 F.3d 1369, 1377 (Fed. Cir. 2018); *id.* at 1376 (purpose of indefiniteness requirement
15 “is to ensure that the disclosure is clear enough to give potential competitors (who
16 are skilled in the art) notice of what design is claimed—and therefore what would
17 infringe.”). In this case, Lululemon’s design patent claims do not give such notice to
18 an ordinary observer, including for the reason that the design patent drawings are
19 irreconcilably inconsistent and unclear.

20 Further, Moret requests that the Court set the following schedule, as indicated
21 on the accompanying schedule worksheet: (i) November 14, 2025: deadline to
22 exchange claim construction positions; (ii) December 15, 2025: deadline to file claim
23 construction briefs; (iii) January 19, 2026 (or a date convenient for the Court): claim
24 construction hearing.

25 Costco’s Statement: Costco agrees that an early claim construction hearing is
26 appropriate and agrees with Moret’s proposed schedule.

27 Plaintiffs’ Statement: lululemon respectfully submits that a separate claim
28 construction proceeding on the design patents at issue is unnecessary and would

1 needlessly delay the case and multiply the costs of litigation. While the Federal
2 Circuit “has held that trial courts have a duty to conduct claim construction in design
3 patent cases, as in utility patent cases, the court has not prescribed any particular form
4 that the claim construction must take.” *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543
5 F.3d 665, 679 (Fed. Cir. 2008) (internal citation omitted). “To the contrary, the court
6 has recognized that design patents ‘typically are claimed as shown in drawings,’ and
7 that claim construction ‘is adapted accordingly.’” *Id. quoting Arminak & Assocs.,*
8 *Inc. v. Saint-Gobain Calmar, Inc.*, 501 F.3d 1314, 1319 (Fed. Cir. 2007).

9 Unlike utility patents, design patents encompass ornamental designs that are
10 claimed as shown in the drawings and illustrations serve as their own best description,
11 making verbal examination of visual elements less productive. As the Supreme Court
12 held long ago and the Federal Circuit has recognized, “[w]ords cannot easily describe
13 ornamental designs.” *Sport Dimension, Inc. v. Coleman Co.*, 820 F.3d 1316, 1320
14 (Fed. Cir. 2016) citing *Dobson v. Dornan*, 118 U.S. 10, 14 (1886).

15 As a result, the Federal Circuit has repeatedly cautioned that a “design patent’s
16 claim is thus often better represented by illustrations than a written claim
17 construction.” *Sports Dimension*, 820 F.3d at 1320; *see also Crocs, Inc. v. Int’l Trade*
18 *Com’n*, 598 F.3d 1294, 1302 (Fed. Cir. 2010) (“This court has cautioned, and
19 continues to caution, trial courts about excessive reliance on a detailed verbal
20 description in a design infringement case.”). Detailed verbal claim construction
21 increases “the risk of placing undue emphasis on particular features of the design and
22 the risk that a finder of fact will focus on each individual described feature in the
23 verbal description rather than on the design as a whole.” *Egyptian Goddess, Inc. v.*
24 *Swisa, Inc.*, 543 F.3d 665, 680 (Fed. Cir. 2008); *see also Daimler AG v. A-Z Wheels*
25 *LLC*, 334 F. Supp. 3d 1087, 1102 (S.D. Cal. 2018) (Resolving design patent claim
26 construction through summary judgment proceedings rather than formal *Markman*
27 hearing and adopting simple claim construction finding that the claimed design was
28 the “ornamental design for a front face of a vehicle wheel, as shown and described in

1 FIGs. 1-4 of the 'D211 Patent” and that any further “verbal elaboration” in the claim
2 is not “necessary or helpful.”).

3 A separate claim construction hearing is also unnecessary to determine the
4 issue of the alleged indefiniteness of the Asserted Patents based on Moret’s
5 unsupported assertion that “the design patent drawings are irreconcilably inconsistent
6 and unclear.” “A visual disclosure may be inadequate—and its associated claim
7 indefinite—if it includes multiple, internally inconsistent drawings.” *In re Maatita*,
8 900 F.3d 1369, 1375 (Fed. Cir. 2018); *see also Ting v. Covina Accessories, LLC*,
9 Case No. LA CV19-06431 JAK (GJSx), 2022 WL 20809320, at *4 (C.D. Cal. Apr.
10 25, 2022) (Denying summary judgment on invalidity of design patents for
11 indefiniteness because “Defendants have not shown, as a matter of law, that the
12 drawings are so inconsistent, internally or otherwise, that a person with ordinary skill
13 in the art could not understand the claimed design as a whole.”) “Errors and
14 inconsistencies between drawings do not merit a § 112 rejection, however, if they do
15 not preclude the overall understanding of the drawing as a whole.” *Ting*, 2022 WL
16 20809320, at *4, *quoting Maatita*, 900 F.3d at 1375-76 (internal quotation marks
17 omitted); *see also Golden Eye Media USA, Inc. v. Trolley Bags UK Ltd.*, 525 F. Supp.
18 3d 1145, (S.D. Cal. 2021) (Denying summary judgment on invalidity of design patent
19 for indefiniteness because the court saw no inconsistencies in the asserted design
20 patent drawings). lululemon’s design patent drawings are clear, consistent and thus
21 give proper notice to an ordinary observer who will understand them as a whole.

22 To the extent the Court agrees with Moret that a separate claim construction is
23 necessary, lululemon requests that the Court set the following schedule that allows
24 the Parties sufficient time to engage in, and complete, meaningful discovery in this
25 case (which Moret’s proposed schedule does not): (i) January 30, 2026: deadline to
26 exchange claim construction positions; (ii) February 27, 2026: deadline to file claim
27 construction briefs; (iii) March 27, 2026 (or a date convenient for the Court): claim
28 construction hearing.

1 k. **Status of Discovery:**

2 **Plaintiffs' Statement:** lululemon served initial discovery requests immediately
3 following the Rule 26(f) conference.

4 **Costco's Statement:** Costco anticipates serving its initial discovery requests
5 in the coming days.

6 **Moret's Statement:** Moret anticipates serving its initial discovery requests in
7 the coming days.

8 l. **Discovery Plan:**

9 The Parties have proposed a schedule of trial and pretrial dates in the
10 completed Schedule Worksheet is attached hereto as Exhibit A.

11 **Rule 26(f)(3)(A)** – The Parties do not believe any changes to the Rule 26(a)
12 disclosures are required. The Parties have not yet served Rule 26(a)(1) initial
13 disclosures or determined the number of depositions that each side is likely to
14 conduct. Because the pleadings are not yet settled, the Parties have agreed that Initial
15 Disclosures be made by October 21, 2025, 14 days after lululemon's response to
16 Moret's counterclaims is due. The parties agree that email service shall be treated as
17 personal service.

18 **Rule 26(f)(3)(B)** – The Parties agree that fact and expert discovery should be
19 conducted in phases with the party bearing the burden of proof on an issue submitting
20 an opening expert report by the Initial Expert Disclosure deadline set forth in the
21 completed Schedule Worksheet is attached hereto as Exhibit A. The party that does
22 not bear the burden of proof on an issue may submit a rebuttal expert report by the
23 Rebuttal Expert Disclosure deadline set forth in the Completed Schedule Worksheet.

24 The Parties anticipate that discovery will be needed on at least the disputed
25 issues identified above, as well as affirmative defenses asserted by Costco and
26 asserted affirmative defenses and counterclaims asserted by Moret. Topics for
27 discovery may include, for example:

28 1. The nature and history of the Parties' business and products at issue;

1 2. lululemon's adoption and first use of the asserted trademarks and trade
2 dress;

3 3. U.S. Trademark Reg. Nos. 4,333,759, 7,526,264 and 7,526,265, related
4 prosecution file histories, and the validity and enforceability of same;

5 4. lululemon's enforcement of the asserted trademarks and trade dress;

6 5. lululemon's use and marketing of the asserted trademarks and trade
7 dress, and the alleged success and recognition of same;

8 6. The alleged acquired distinctiveness of the asserted trade dress and
9 asserted TIDEWATER TEAL mark;

10 7. The channels of trade for the Parties' products at issue;

11 8. The Parties' marketing, advertising, and promotion of the Parties'
12 products at issue;

13 9. The actual and target customers for the Parties' products at issue;

14 10. Any actual or likely confusion between Defendants' accused products,
15 and the lululemon products at issue;

16 11. lululemon's trademark usage guidelines;

17 12. The '442 and '219 patents, related prosecution file histories, and the
18 scope, validity, and enforceability of same;

19 13. Publications, patents and other prior art relating to the '442 and '219
20 patents;

21 14. The Parties' pricing, sales, revenues, profits, discounts, and costs
22 associated with Parties' products at issue;

23 15. lululemon's claim for damages;

24 16. The Parties' communications regarding their dispute.

25 Rule 26(f)(3)(C) – The Parties discussed electronically-stored information
26 (“ESI”) and anticipate entering into a stipulated ESI Order.

27 Rule 26(f)(3)(D) – Pursuant to Federal Rule of Evidence 502, the Parties agree
28 that if any documents subject to a claim of privilege or protection are inadvertently

1 produced, such an inadvertent disclosure shall not operate as a waiver in any
2 proceeding, provided the elements of Federal Rule of Evidence 502(b) have been
3 met, and will memorialize this agreement in the Parties' anticipated stipulated
4 protective order.

5 Rule 26(f)(3)(E) – The Parties do not propose any modifications to the limits
6 on discovery imposed by the Federal Rules of Civil Procedure, except that the Parties
7 agree to the following limitations on discovery per side: lululemon is allotted 10
8 depositions, and Costco and Moret, collectively, are allotted 10 depositions. Each of
9 Costco and Moret are allotted 25 interrogatories, and lululemon is allotted 25
10 interrogatories to each of Costco and Moret.

11 Rule 26(f)(3)(F) – The Parties anticipate entering into a stipulated protective
12 order to maintain the confidentiality of private or confidential information sought
13 during discovery.

14 m. **Discovery Cut-off:**

15 The proposed timing of the fact discovery cut-off is set forth in the completed
16 Schedule Worksheet, attached hereto as Exhibit A.

17 n. **Expert Discovery:**

18 The proposed timing of expert witness disclosures under Rule 26(a)(2) is set
19 forth in the completed Schedule Worksheet is attached hereto as Exhibit A.

20 o. **Settlement Conference / Alternative Dispute Resolution (ADR):**

21 To date, no settlement or ADR efforts have been made by the Parties since the
22 filing of the Complaint. Pursuant to L.R. 16-15.4, the Parties select ADR Procedure
23 No. 3 – The Parties shall participate in a private dispute resolution proceeding.
24 Pursuant to L.R.-15.2, the Parties have filed concurrently herewith Form ADR-01
25 Request: ADR Procedure Selection and further propose that the private dispute
26 resolution proceeding occur by August 2026 unless otherwise ordered by the Court.
27 In the event that the private dispute resolution proceedings prove to be unsuccessful,
28 the Parties may seek to conduct additional private dispute resolution proceedings

1 later in the case.

2 p. **Trial Estimate:**

3 The Parties request that any trial be conducted before a jury. lululemon
4 estimate that the length of trial will be 4-5 court days. Costco estimates that the
5 length of trial will be 5-7 court days. Moret estimates that the length of trial will be
6 4-6 court days. The Parties cannot yet determine the number of witnesses that they
7 would call. However, the Parties will be in a better position to determine the number
8 of witnesses they intend to call at trial after discovery has been completed. The
9 Parties' currently proposed dates for the pretrial conference and trial are set forth in
10 the completed Schedule Worksheet is attached hereto as Exhibit A.

11 q. **Trial Counsel:**

12 At this time, trial counsel for the Parties are identified as follows:

13 For lululemon:

14 MORGAN, LEWIS & BOCKIUS LLP
15 Ali S. Razai, Bar No. 246,922
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17 For Moret:

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r. **Independent Expert or Master:**

The Parties do not believe at this time that the Court needs to appoint an independent expert or special master for this matter.

s. **Schedule Worksheet:**

The completed Schedule Worksheet is attached hereto as Exhibit A.

t. **Other Issues:**

The Parties have consented to electronic service of documents pursuant to Fed. R. Civ. P. 5(b)(2)(E).

Respectfully submitted,

1 Dated: October 3, 2025

MORGAN, LEWIS & BOCKIUS LLP
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2 By /s/ **Ali S. Razai**

3 Ali S. Razai
4 Brandon G. Smith
5 Brian P. O'Donnell
6 Jack Hendershott

7 DTO LAW
8 William A. Delgado

9 Dated: October 3, 2025

10 By /s/ **William A. Delgado**

11 William A. Delgado
12 Ellen Y. Yang
13 Nicole G. Malick
14 Sudip Kundu

15 Attorneys for Defendant
16 COSTCO WHOLESALE
17 CORPORATION

18 PRYOR CASHMAN LLP
19 Thomas Vidal

20 Dated: October 3, 2025

21 By /s/ **Matthew Barkan**

22 Thomas Vidal
23 Brad D. Rose
24 Matthew Barkan
25 Jeffrey L. Snow
26 Alexander White
27 Kate E. Garber

28 Attorneys for Defendant-Intervenor
JACQUES MORET, INC.

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and I am employed in Orange County, California. I am over the age of eighteen years and not a party to the within action. My business address is 600 Anton Boulevard, Suite 1800, Costa Mesa, CA 92626-7653.

On October 3, 2025, I served the foregoing document on counsel shown below via ECF:

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Attorneys for Intervenor
JACQUES MORET, INC.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 3, 2025, at Costa Mesa, California.

/s/ Leslie Garcia
Leslie Garcia